

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HONOURABLE **Mr. JUSTICE MUMMINENI SUDHEER**
KUMAR

W.P. No.22405 of 2018
and W.M.P.Nos.26249 & 26250 of 2018

1. M.Bagavathi
2. M.Baskaran
3. K.Mani
4. P.Prabu

.. Petitioners

(P1 is dismissed as per order dated 06.06.2024 in W.P.No.22405/2018)

Versus

1. The State of Tamil Nadu
Rep.by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
4. The Chairman,
Teacher Recruitment Board,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
Chennai – 600 006.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents to fill up the backlog vacancies to the post of BT Assistant in Social Science (Geography) following the method of selection adopted in G.O.Ms.No.71 School Education Department dated 30.05.2014 and consequently to consider the petitioners for selection and appointment to the post of BT Assistant in Social Science (Geography) as per weightage marks awarded in the Certificate Verification conducted from 24.07.2017 to 27.07.2017, without reference to G.O.Ms.No.149 School Education Department dated 20.07.2018, within a time frame to be fixed by this Court.

For Petitioners : Mr.S.Nedunchezhiyan

For Respondents : Mr.K.H.Ravikumar
Government Advocate for R1 to R3

Mr.C.Kathiravan for R4

ORDER

When the matter is taken up for consideration it is brought to the notice of this Court by the learned counsel appearing for the petitioners that the issued involved in this case is as similar as that of the issue involved in W.P.No.26084/2023 and batch wherein the learned Division Bench of this Court allowed the writ petitions by a common order dated 10.07.2024. A copy of the said order is also placed before this Court.

2. This Court having gone through the same, noticed that the petitioners therein who participated in the selection process for being appointed to the post of 'Teachers' have completed the certificate verification also but in the midway the procedure for selection of Teachers was altered by issuing a Government Order in G.O.Ms.No.149 School Education (TRB) Department dated 20.07.2018 and considering the same this Court came to a conclusion that changing the process of selection in a midway is impermissible in terms of law laid down by the Hon'ble Supreme Court and recorded the finding as under:

“ .. 32. The next question would be whether the method of selection now adopted, if applied to the petitioners would amount to changing the rules of the same after the same has commenced. The petitioners herein and other similarly placed persons who have completed certificate verification before 2018, cannot be treated on par with those who have graduated this year or in the recent past. Particularly those who have taken the effort to challenge the validity of the method of selection and waited patiently for 10 years cannot now be denied employment by putting them to disadvantageous position, so as cases to take away their chance of public employment and their fundamental right to equality of opportunity in public employment as envisaged under Article 16 of the Constitution. Viewed from this angle, the petitioners form a separate class who should be given priority in appointment. In other words, GO Ms.No.149 School Education (TRB) Department

dated 20.07.2018 cannot be made applicable to the petitioners. Also, the present method totally disregards and ignores all other scores obtained by candidates including TET scores which is not legally sustainable as far as the petitioners are concerned. This is because the NCTE notification dated 11.02.2011 particularly, in para 9 (b) states that weightage is to be given to the TET marks in the selection and appointment of teachers. These guidelines have been specifically adopted by the State Government in GO Ms.No.181 School Education (C2) Department dated 15.11.2011. Having held that the process of selection had commenced in 2017 with the certificate verification, and the State Government had consciously applied the method of selection as envisaged in GO Ms.No.71 dated 30.05.2014 and thereafter abandoned it for no reason justifiable in law, now subjecting the petitioners to a new method would amount to changing the rules of the game midway. As such, any change in the method of selection will definitely amount to change in rules of the game, primarily because, as far as petitioners are concerned, their process of selection, commenced in 2017, but cases remains unconcluded. Therefore, asking the petitioners to now subject themselves to a fresh process of selection with an enlarged group of persons in the zone of consideration would be treating unequals equally which is impermissible under Article 14 of the Constitution.”

3. The learned Division Bench having arrived at the conclusion as above confined the relief only to the petitioners in the said batch of writ

petitions on the ground that the fence-sitters are not entitled for such benefit and also declared that no fresh writ petition should be entertained basing upon the said decision of the learned Division Bench and held as under:

“ 35. Immediately thereafter, when it was imminent that the State Government would make direct recruitment, the writ petitioners approached this Court with the present reliefs. While the petitioners herein are similarly placed to the thousands of candidates who have participated in the process of selection started by the State Government in 2017, what differentiates the writ petitioners from the others is the fact that they approached this Court seeking redressal of their grievances, without waiting in the wings and taking any calculated chance. All the writ petitioners have in some way or the other been consistently approaching the court and that is what sets them apart. While cases some of the writ petitioners had regularly approached this Court and gone upto the Supreme Court, some of the writ petitioners had challenged GO Ms.No.149 dated 20.07.2018 by way of writ petitions even in the year 2018. Therefore, the writ petitioners are the only persons who approached this Court seeking consideration in appointment on the basis of the selection commenced by the State in 2017. It is further reiterated that all the petitioners in the above writ petitions are similarly placed as they approached this Court well in time i.e., immediately after the observation made by this Bench directing the State Government to make direct recruitment of teachers. The fact that some of the petitioners had gone upto Supreme Court and some others had been approaching this Court at different points of time cannot be a dividing factor among them. On the contrary, it only

*shows that the petitioners herein are a vigilant lot of citizens and as such, all the petitioners in the above writ petitions from one class by themselves and cannot be equated to fence-sitters or to such persons who have not approached the court. As such, the petitioners before this court are seeking a remedy in personam, forming a separate class of persons. The relief claimed in these writ petitions is therefore restricted to these petitioners alone. It is also made clear that citing this judgment, fence-sitters will not be entitled to similar relief by filing fresh writ petitions. In **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors. [2014 (12) SCR 193]**, it was held as follows:*

"23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their

cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

24. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide

orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs." "

4. Having held as above, the learned Division Bench proceeded to grant the relief in favour of the petitioners by holding as under:

“ 36. In view of the above discussion and findings, we are of the considered opinion that the writ petitioners are entitled to the reliefs sought herein. However, as stated earlier, this order is only restricted to these petitioners alone.

37. *The petition in WMP No. 7353 of 2024 in W.P. No. 26133 of 2023, has been filed to implead the petitioners therein in the writ petition mentioned hereinabove, without stating in what capacity they seek to be impleaded, while making stray averments that they are similarly placed as the petitioners. Also, the said petition has been filed after the arguments were completed in the writ petitions and the counsel for the impleading petitioners was not able to answer any of the queries raised by this Court. Therefore, we are of the view that the impleading petition is thoroughly misconceived in law and the same deserves to be dismissed with exemplary costs. However, we refrain from imposing any costs. As such, this miscellaneous petition is dismissed.*

38. *In the result, all the writ petitions are allowed with a direction to the State Government to continue the process of appointment left midway in 2017, insofar as the petitioners are concerned and appoint them as Secondary Grade Teachers, or Graduate Assistants as the case may be, as expeditiously as possible, without causing any further delay, if they are otherwise eligible for appointment as per the eligibility criteria laid down by the NCTE, and to appoint them as teachers depending on their respective merit/ranking as per the weightage method and their TET scores, applying the rule of reservation cases accordingly. As these writ petitions were filed well before the recruitment notification dated 25.10.2023, number of vacancies already advertised in the said recruitment notification or the present number of vacancies shall not be cited as a reason for not giving effect to the direction stated above.”*

5. This Court on considering the above decision rendered by the learned Division Bench and the claim made by the petitioners in this writ petition and the facts of the case on hand, is convinced that the petitioners herein are also the persons who participated in the process of certificate verification much prior to the date of issuance of Government Order in G.O. Ms.No.149 School Education (TRB) Department, dated 20.07.2018 and also entitled for the similar relief as was granted by the learned Division bench in W.P.Nos.26084/2023 & batch of cases. As this writ petition was filed as early as in the year 2018, the petitioners would not fall under the category of fence-sitters and therefore, they are also entitled to the similar relief.

6. Accordingly, this Writ Petition is allowed and the respondents are directed to continue the process of appointment left in midway in the year 2017, in so far as the petitioners 2 to 4 are concerned and appoint them as Secondary Grade B.T.Assistant in Social Science (Geography) as expeditiously as possible, without causing any further delay, if they are otherwise eligible for appointment as per the eligibility criteria laid down by NCTE and appoint them as such depending upon their respective merit /

ranking as per the weightage method and their TET Scores, applying the rule of reservation accordingly. As this writ petition was filed well before the recruitment notification dated 25.10.2013, the number of vacancies already advertised in the said recruitment notification or the present number of vacancies shall not be cited as a reason for not giving effect to the above direction. No costs. Connected miscellaneous petitions are closed.

29.07.2024

Index:Yes / No

Speaking order / Non speaking order

Neutral Citation Case: Yes / No

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Copy To:

1. The Principal Secretary to Government,
State of Tamil Nadu
School Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Director of School Education,
DPI Campus, College Road,
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MUMMINENI SUDHEER KUMAR, J.

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